

DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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C.B.

Petitioner,

v.

COMMUNITY OF HOPE
Respondent

Case Nos.: 2010-SHEL-00120
2010-SHEL-00133
2011-SHEL-00037
(Consolidated)

FINAL ORDER

I. Introduction

A hearing in these three cases was held on February 14, 2011. I will order as follows:

In Case No. 2010-SHEL-00120, the District of Columbia Department of Human Services (“DHS”) has reversed the Community of Hope’s decision to terminate Petitioner C.B. from the Homelessness Prevention and Rapid Re-Housing Program (“HPRP”). No openings are currently available in the HPRP program, but the Community of Hope has already provided services to Ms. B. under the Short Term Emergency Assistance Program (“STEAP”). I will order the Community of Hope to continue to provide emergency rental assistance services to Ms. B. under an available program, subject to the provisions of the Homeless Services Reform Act of 2005 (the “Act”).

In Case No. 2010-SHEL-00133, I will reverse the Community of Hope's notice of termination of shelter services to Ms. B. for failure to accept permanent housing after two offers. The Community of Hope has failed to prove that it documented efforts to suspend or transfer Ms. B. from its program for the homeless, or that the housing opportunities offered met the requirements of the Act.

In Case No. 2011-SHEL-00037, I will reverse the Community of Hope's notice of emergency termination of shelter services to Ms. B. for presenting an imminent harm to herself or others at the facility. The testimony of Ms. B., which I must credit over the hearsay accounts presented by the Community of Hope, show that Ms. B. acted in self-defense and defense of her daughter and grandson when she was involved in an altercation at the facility.

II. Procedural Background

A. Case No. 2010-SHEL-00120

On November 8, 2010, in Case No. 00120, Ms. B. filed a hearing request, challenging a decision of the Community of Hope, refusing to award her assistance from the HPRP. On November 9, 2010, a Notice of Filing was issued, notifying Ms. B., the Community of Hope, and the Department of Human Services ("DHS") that the hearing request had been filed. DHS was directed to conduct administrative review.

In this case, the Office of Administrative Hearings ("OAH") has never received a copy of the administrative review decision from DHS. However, Heidi Schultheis of the Community of Hope provided a copy of the administrative review decision at the February 9, 2011 hearing. The administrative review decision, dated January 24, 2011, was in favor of Ms. B., and the

decision denied or reversed the Community of Hope's decision to terminate Ms. B. from the HPRP program.

B. Case No. 2010-SHEL-00133

On November 16, 2010, in Case No. 00133, Ms. B. filed a hearing request, challenging a notice of termination of shelter services. The Community of Hope issued this notice on November 15, 2010, seeking to terminate Ms. B. from its shelter program for the homeless, because Ms. B. allegedly failed to accept offer of permanent housing after two offers.

On November 16, 2010, a Notice of Filing was issued, notifying Ms. B., the Community of Hope, and DHS, that the hearing request was filed. DHS was directed to conduct administrative review.

On December 22, 2010, DHS filed its Administrative Review Report in Case No. 00133. The administrative review decision upheld the decision of the Community of Hope in that case. However, Ms. B. remains entitled to have a hearing before OAH.

C. Case No. 2011-SHEL-00037

On January 14, 2011, in Case No. 00037, Ms. B. filed a hearing request, challenging a notice of **emergency** termination of shelter services. The Community of Hope issued this notice on January 11, 2011, seeking to terminate Ms. B. from its program, because Ms. B. allegedly was involved in a physical altercation with another resident requiring police intervention. The Community of Hope contended that Ms. B. posed an imminent threat to the safety of herself or others at the shelter, and sought to impose its termination immediately, under § 24(a) of the Act. D.C. Official Code § 4-754.38(a).

When a shelter program seeks to impose an immediate termination or suspension of shelter services, it is required to notify DHS immediately of the action. DHS is then required to issue its emergency review of the proposed emergency action within 24 hours. §§ 4-754.38(b) and (c).

On January 14, 2011, DHS filed its Emergency Action Compliance Finding, dated January 12, 2011. DHS concluded that the Community of Hope had complied with the Act and upheld the proposed emergency termination. However, Ms. B. remained entitled to both administrative review before DHS and a hearing before OAH. §§ 4-754.41 and 4-754.42.

Ms. B. orally notified the OAH Clerk's Office that she intended to waive administrative review and have a hearing directly before OAH. Ms. B. was informed she needed to submit a written waiver. The OAH Clerk's Office delayed issuing a notice of filing, because it was waiting for Ms. B. to file a written waiver of administrative review.

As of February 7, 2011, Ms. B. had not filed any written waiver of administrative review. On that date, the Notice of Filing was issued, notifying Ms. B., the Community of Hope, and DHS of the hearing request. DHS was directed to conduct administrative review.

D. Preliminary Hearings Before OAH

Based upon the filing of the administrative review report in Case No. 2010-SHEL-00133, OAH scheduled hearings in two cases: (1) in Case No. 00120 before Judge Dean at 1:30 PM on January 13, 2011; and (2) in Case No. 00133 before this administrative law judge at 2:30 PM on January 13, 2011.

Both parties filed requests for continuance of the hearings. The Community of Hope requested a continuance of the hearing in Case No. 00120, because DHS had not yet issued its administrative review report in that case. Ms. B. requested a continuance of the hearings in both cases, in order to retain an attorney.

On January 13, 2011, I issued an Order for Continuance. This Order consolidated Case Nos. 00120 and 00133 for disposition before this administrative law judge, and scheduled a hearing for February 9, 2011 at 10:00 AM.

On February 8, 2011, Thomas Mark, Esq., of the Bread for the City Legal Clinic, entered his appearance in these cases on behalf of Ms. B.

The hearing was held as scheduled on February 9, 2011. Mr. Mark appeared on behalf of Ms. B., who also attended the hearing. Vytas Vergeer, Esq., of the Bread for the City Legal Clinic, attended the hearing but did not enter his appearance. Heidi Schultheis, HPRP Assessment and Eligibility Screener, appeared on behalf of the Community of Hope. Julie Gallagher, Family Case Manager for Hope Apartments, a subsidiary of the Community of Hope, and Michael Idiokitas, HPRP Program Manager for the Community of Hope, also attended the hearing.

The parties agreed that it was appropriate to consolidate Case No. 00037 with the other cases, and schedule one hearing in all matters. Ms. B. filed a written waiver of administrative review in Case No. 00037, so that she could have a hearing directly before OAH.

The Community of Hope was not prepared to present its evidence in Case No. 00037. However, while this case is pending, Ms. B. does not have housing for her family since the

Community of Hope has immediately imposed the proposed termination. In light of these factors, the parties agreed to continue the hearing on short notice to February 14, 2011 at 1:30 PM. Deadlines for disclosure of documents and witnesses were waived.

On February 9, 2011, I issued an Order for Consolidated Hearing, notifying the parties of the new hearing date and other procedures.

E. The Hearing on February 14, 2011

The full evidentiary hearing was held on February 14, 2011. Mr. Mark again appeared on behalf of Ms. B., who attended the hearing. Jamie Burden, Director of Housing Programs, appeared on behalf of the Community of Hope. Ms. Schultheis and Ms. Gallagher also attended the hearing.

Resolution of Case No. 2010-SHEL-00120

At the outset of the hearing, the parties addressed the impact of the administrative review decision in Case No. 00120. In that case, the decision reversed the proposed termination of Ms. B. from the HPRP program.

This administrative court has held that, if the shelter program's action is reversed or denied at administrative review, that decision is a final order that is binding upon the shelter program. *M.H. v. CCNV*, 2007 Off. Adj. Hear. LEXIS 75 at *28-29 (Final Order, August 2, 2007); *see* D.C. Official Code § 4-754.41(a)(1) [a client or representative may appeal an administrative review decision, but there is no mention of such right for a shelter provider].

Mr. Mark moved for an order requiring the Community of Hope to reinstate Ms. B. in the HPRP program. However, Mr. Burden stated that the HPRP is out of funds, as no funds were authorized for the fiscal year beginning October 1, 2010. The Community of Hope has continued to work with Ms. B. in a similar program offering rental assistance for permanent housing, the STEAP program. This program lasts only three months. The Community of Hope contends that, once the term expires or funds run out, there is no other program that the Community of Hope can offer Ms. B.

The parties agreed that it would be appropriate for me to order the following: the Community of Hope must comply with the DHS administrative review decision in Case No. 00120. Compliance means that the Community of Hope must provide some form of rental assistance program to Ms. B. forthwith, subject to the terms of the Act.

If circumstances change in the future, the Community of Hope may issue a new notice of action with regard to Ms. B.'s rental assistance benefits. Ms. B. retains her right to file a timely hearing request in response to any future notice.¹

The Hearing on the Merits of Case Nos. 2010-SHEL-00133 and 2011-SHEL-00037

The hearing proceeded as to the two termination of shelter service cases, 00133 and 00037. The Community of Hope presented its evidence first, followed by Ms. B.

¹ Generally, unless the shelter service provider seeks an emergency termination of shelter services, the client is entitled to a stay of the proposed suspension or termination of services if the client files a hearing request within 15 days of receiving proper notice of the proposed action. If the client files a hearing request after 15 days, but within 90 days, of receiving such notice of the proposed action, the client is not entitled to a stay of the action, but the client is entitled to administrative review and a hearing before OAH to contest the action after it has been imposed. *See* D.C. Official Code §§ 4-754.33 [requirements for notice of action]; 4-754.41(a) [90-day deadline to request a hearing]; and 4-754.41(d) and 4-754.11(18) [right to receive continuation of services if client files hearing request within 15 days].

Mr. Burden and Ms. Gallagher testified for the Community of Hope. Ms. B. testified on her own behalf.

The following exhibits were admitted into evidence:

- Respondent's Exhibit ("RX") 200 - Metropolitan Police Department ("MPD") Incident-Based Event Report, referencing incident on 1/11/11 at 3715 2nd Street, S.E.
- RX 201 - DHS Emergency Action Compliance Finding, dated 1/12/11.
- RX 202 - Ms. B.'s hearing request in Case No. 00037, dated 1/14/11.
- RX 203 - E-mail message from Minozka King Silber, Housing Specialist for the Community of Hope, to Michael Idiokitas and Vanessa Bonano, dated 9/17/10.
- Petitioner's Exhibit ("PX") 100 - Complaint from Ms. B. to the Community of Hope, with 13 pages of attachments, dated 12/7/10.
- PX 101 - Memo from Mr. Burden and Willa Morris to Hope Apartment Residents, dated 1/12/11.
- PX 102 - The Community of Hope Program Rules, approved by DHS on 3/1/09.
- PX 103 - The Community of Hope Additional Program Rules, revised 8/4/06.
- PX 104 - E-mail message from Ms. King Silber to Ms. B., dated 10/13/10.
- PX 105 - E-mail message from Ms. King Silber to Ms. B., dated 10/18/10.
- PX 106 - E-mail messages between Ms. B. and Ms. King Silber, both dated 10/29/10.

Based on the testimony of the witnesses, my evaluation of their credibility and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

III. Findings of Fact

A. General Findings

The Community of Hope operates a variety of service programs that are available to homeless persons and families in the District. Of importance here, the programs include: (1) the Hope Apartments, which provides housing and other services to persons who have families and who have substance abuse problems; and (2) rental assistance programs for permanent housing, including HPRP and STEAP. The Hope Apartments program is a short-term program intended to assist the clients and their families with substance abuse treatment and job placements, and then with transition into permanent housing.

On June 1, 2009, Ms. B. entered into the Hope Apartments with her younger daughter. Ms. B. was homeless and addicted to drugs. Ms. B. completed an inpatient drug treatment program and then entered into aftercare. Ms. B. has completed the phase of her program addressing the crisis of her drug addiction.

Ms. B. and her daughter lived in an apartment at the Hope Apartments until January 11, 2011, when the Community of Hope implemented its proposed termination of services to her in Case No. 00037.

B. Findings as to Case No. 2010-SHEL-00133

Since March 2010, the Community of Hope has offered housing referrals and rental assistance programs to Ms. B., to assist her in transitioning into permanent housing. Ms. King Silber is the Housing Specialist for the Community of Hope working with Ms. B. on permanent housing opportunities.

Ms. B. has told Ms. King Silber that Ms. B. requires a two-bedroom unit that is safe and affordable. Ms. B. also seeks housing in the South East quadrant of the District, because this area is close to her daughter's school.

Ms. B. obtained her food-handlers certificate in 2010, to assist her in finding suitable work. Prior to October 2010, Ms. B. worked for the Marriott Corporation and earned net income of approximately \$925 twice per month. Ms. B. was briefly unemployed in October 2010. At that time, Ms. B. estimated that she could afford no more than \$1,000 in rent and utilities per month.

Ms. B. now works for the International House of Pancakes, earning net income of \$175 per week. She could not presently afford \$1,000 in housing costs, because this would be greater than the amount of income she receives each month.

On October 13, 2010, Ms. King Silber sent to Ms. B. by e-mail message a list of eight rental properties that Ms. King Silber suggested might be suitable for Ms. B. and her daughter. PX 104. Later, Ms. King Silber informed Ms. B. by e-mail message that she would have to submit an application for a suitable property no later than October 22, 2010. PX 105.

Ms. B. investigated these properties, and the following list shows the reasons why she rejected each property:

(1) 2118 13th Street, S.E. (House) – The rent was \$1,600 per month plus utilities, and this exceeded Ms. B.'s budget. Also, it was a three-bedroom house, which was more than Ms. B. needed.

(2) 824 51st Street, N.E. (House with basement) – The rent of \$1,600 per month plus utilities exceeded Ms. B.’s budget. Again, it was a three-bedroom house.

(3) 411 Mellon Street, S.E. (2-unit building with backyard) – The rent was \$1,500 per month, and there was evidence of drug activity which was not suitable for Ms. B.

(4) 3935 B Pennsylvania Avenue, S.E. (Townhouse with washer and dryer) – This property was already rented when Ms. B. called the next day.

(5) 2928 Southern Avenue, S.E. (Apartment) – The rent of \$1,600 plus utilities exceeded Ms. B.’s budget. This was a three-bedroom unit.

(6) 950 Southern Avenue, S.E. (Apartments) – This was a new condominium complex that was supposed to be available on October 26, 2010. When Ms. B. visited it, the building was boarded up.

(7) 3212 28th Street, S.E. (Apartment) – The rent of \$1,400 plus utilities exceeded Ms. B.’s budget. This was a three-bedroom unit.

(8) 2823 Myrtle Avenue, N.E. (House) – The rent of \$1,600 plus utilities exceeded Ms. B.’s budget. This was a three-bedroom property.

Under the HPRP program, Ms. B. was only guaranteed payment of first month’s rent and the security deposit. On October 27, 2010, the Community of Hope issued its notice that it would terminate Ms. B.’s participation in the HPRP due to alleged lack of cooperation. (Case No. 00120) PX 106.

The Community of Hope has more recently offered rental assistance to Ms. B. under STEAP. This program only lasts for three months, and after that, Ms. B. would be responsible for her full rent and utilities obligations.

The Community of Hope has not shown that any of these properties meet the District's building code requirements or that they were affordable for Ms. B.

C. Findings as to Case No. 2011-SHEL-00037

The Community of Hope has a policy of zero tolerance toward violence or threats of violence at its facilities. PX 101; PX 102 Section I; PX 103 Section 5g.

Prior to January 2011, Ms. B. experienced a series of conflicts with another resident of Hope Apartments, K.R. K.R. and Ms. B. attended the same groups, during which there had been conflict. K.R. lived in an apartment below Ms. B.'s apartment, and Ms. B. had to pass by K.R. to get to her home. Ms. B. was fearful of K.R. because of her verbal taunts as Ms. B. passed her apartment. K.R. is physically larger than Ms. B.

On December 7, 2010, Ms. B. filed a complaint or grievance with the Hope Apartments concerning threatening behavior from K.R. to her. PX 100. At that time, Ms. B. spoke with Ms. Johnson, who was then the program manager for Hope Apartments. Ms. Johnson left her employment later that month.

On approximately January 4, 2011, Willa Morris, of the Community of Hope staff, arranged a short meeting with K.R. and Ms. B. to discuss the grievance. Ms. Morris told Ms. B. to come to staff with any concerns, and Ms. Morris promised to investigate the alleged threats. Otherwise, the Community of Hope took no action on the grievance. Mr. Burden, the Director of

Housing Programs, considered the matter closed because Ms. B. had not come forward with any new concerns.

On the evening of January 11, 2011, at approximately 6:00 PM, Ms. B. returned to her apartment complex to celebrate her younger daughter's birthday. She was accompanied by relatives, including her older daughter, and the older daughter's two children. K.R. appeared at her window and shouted down to Ms. B. that K.R. would "beat your behind," or words to that effect. Ms. B. told her older daughter to go ahead into the apartment.

When they approached the stairwell to Ms. B.'s apartment, the other daughter entered first and was holding a grandchild. Ms. B. followed behind. As they approached K.R.'s apartment, K.R. came out. K.R. grabbed the leg of Ms. B.'s older daughter, while the older daughter was holding the grandchild. The older daughter then pulled K.R.'s hair in anger, and all went tumbling down the stairs, including Ms. B. Ms. B. found K.R. on top of her older daughter, and Ms. B. pulled K.R. off her. Ms. B. then pinned down K.R. The fighting escalated between K.R. and Ms. B.

The monitor on duty called the MPD for assistance. She then called Mr. Burden and Ms. Gallagher, Family Case Manager for Hope Apartments.

The fighting had ended by the time police officers arrived at Hope Apartments. The police officers interviewed witnesses and observed that K.R. had scratches to her nose, back and shoulder. RX 200.

Ms. Gallagher and Mr. Burden both arrived at Hope Apartments between 8:00 and 8:30 PM. They both also interviewed witnesses and reviewed a videotape of the incident. They both

concluded that Ms. B. was the instigator of the fight with K.R., and that Ms. B. was the one who pulled K.R.'s hair at the outset of the fight.

On January 11, 2011, the Community of Hope issued its notice of proposed emergency termination of shelter services to Ms. B., based on the incident occurring that day. The Community of Hope imposed its proposed termination immediately.

Based on the same incident, the Community of Hope also sought to terminate shelter services to K.R. The Community of Hope later reinstated K.R. to its program at the Hope Apartments.

D. Discussion of Credibility of the Evidence

In both of these cases, 00133 and 00037, the Community of Hope has failed to sustain its burden of proof, largely because the key actors who played roles in the critical events did not testify in the hearing room. Most of the testimony and accounts of the events presented by the Community of Hope consisted of hearsay.

At the hearing, there was confusion about the hearsay rule, so I will discuss this rule in some detail as it applies to the evidence in these cases.

In an administrative hearing, hearsay evidence is admissible. *See* D.C. Official Code § 2-509(b); OAH Rule 2821.6 [which also provides that the judge must consider the speaker's absence in evaluating the evidence]. Hearsay evidence is defined as an out-of-court statement offered to prove the truth of the matter asserted. Federal Rules of Evidence Rule 801. The fact that hearsay is admissible does not mean that it is entitled to greater weight than live testimony based on direct personal knowledge.

To illustrate the hearsay rule, I will discuss two examples. Ms. B. testified that, on January 11, 2011, K.R. said to her and her older daughter, “I’ll kick your behind,” or words to that effect. This testimony is not hearsay, because Ms. B. testified about what she observed directly. Ms. B. did not describe K.R.’s statement to prove that K.R. was telling the truth. The statement was offered based on the fact that it was spoken, to show that it caused Ms. B. to be frightened. In other words, the importance of K.R.’s statement is only whether she said those words to Ms. B., and not whether K.R.’s words are the truth.

By contrast, Ms. Gallagher testified that, on January 11, 2011, she responded to the Hope Apartments and interviewed witnesses to the event. She testified that witnesses said that Ms. B. started the fight by pulling K.R.’s hair. This is hearsay, because Ms. Gallagher testified about out-of-court statements, that were offered to prove the truth of the statements. The Community of Hope contends that the accounts by the out-of-court witnesses are true.

The problem with hearsay evidence is twofold: (1) the judge cannot observe the out-of-court witness’s demeanor to assess whether the witness should be believed; and (2) no one can cross-examine or ask any questions of the out-of-court witness.

In *Compton v. District of Columbia Board of Psychology*, 858 A.2d 470 (D.C. 2004), the District of Columbia Court of Appeals reversed the decision of an administrative law judge (“ALJ”) who credited hearsay statements over live testimony, because the Court of Appeals determined the findings were not based upon substantial evidence.

The Court of Appeals acknowledged that hearsay evidence is admissible in administrative proceedings, but disagreed with the weight that the ALJ assigned to the hearsay evidence. The Court rejected any hard-line rule that hearsay evidence must always be trumped by live evidence.

However, the Court noted that it had cautioned against unreasonable reliance upon hearsay evidence, when direct testimony is given in contradiction to the hearsay, particularly when the hearsay declarant is available to testify. *Compton* at 475; see, e.g., *Lim v. District of Columbia Taxicab Comm'n*, 564 A.2d 720 (D.C. 1989); *Jadallah v. District of Columbia Dep't of Employment Servs.*, 476 A.2d 671 (D.C. 1984).

The Court in *Compton* determined that, **where the declarant was available**, the ALJ erred in relying on the out-of-court deposition by the declarant, even if there was testimony tending to corroborate her testimony. *Compton*, at 479-480. The Court noted that the ALJ assessed the demeanor of the live witness, but had no opportunity to do so with regard to the declarant.

Applying this analysis to the present two cases, I cannot credit the hearsay evidence of the Community of Hope over that of the live testimony given by Ms. B.

In Case No. 00133, the primary person responsible for arranging permanent housing opportunities for Ms. B. was Ms. King Silber, the Housing Specialist. Ms. King Silber was not offered as a witness, and there was no indication that she was unavailable to testify. Ms. King Silber alone had direct knowledge as to whether the properties that she referred to Ms. B. had been inspected or had been determined to comply with the D.C. building codes or even were appropriate for Ms. B.

Instead of offering Ms. King Silber as a witness, the Community of Hope relied upon Mr. Burden's recollections of Ms. King Silber's information, and the contents of the case file, along with copies of e-mail messages sent by Ms. King Silber. Mr. Burden claimed that Ms. B. had

been offered numerous housing opportunities from March 2010 through October 2010, and that Ms. B. had not accepted any of them.

Mr. Burden could not, and did not, testify whether any of these properties were suitable for Ms. B.'s needs.

Ms. B. testified as to the eight properties listed in the October 13, 2010 e-mail message. PX 104. Ms. B. offered legitimate reasons why none of these properties met her needs, most importantly, that she could not afford any of them. There was no one in the hearing to explain why Ms. King Silber was offering three-bedroom units to Ms. B., when Ms. B. claimed that she told Ms. King Silber that she only needed two bedrooms and that she could only afford \$1,000 in housing costs per month.

Since I had no opportunity to observe Ms. King Silber's demeanor or to ask her questions or to address issues that had come up at the hearing, I was left with Ms. B.'s unanswered points regarding the unsuitability of the properties provided.

In observing and listening to Ms. B., I had no reason to discredit or discount her testimony. Consequently, I have credited her explanations why she did not accept the offers of housing made by Ms. King Silber.

In Case No. 00037, Mr. Burden and Ms. Gallagher both testified that they reviewed a videotape of the incident on January 11, 2011, and that they interviewed direct witnesses to the fight. However, the Community of Hope brought no direct witnesses to the hearing and did not provide the videotape upon which they relied.

The police report, RX 200, presents other hearsay problems. I accept that the term, “S-1,” referred to Ms. B., as the context of the case supports this inference. However, there is no contention that the fight occurred in the officers’ presence, and their report does not identify the sources of their information as to how the fight occurred. Therefore, the version of the fight given by the officers constitutes double hearsay, in that the report is a hearsay statement by out-of-court declarants (the officers), and within their report are hearsay statements of people they interviewed. Even worse, the officers did not identify the sources of their information. Therefore, we not only do not have the out-of-court witnesses present, but we do not even know who they are.

The officers could observe the injuries to K.R. when they arrived, and they noted their observations in the report. I credited this hearsay account, which is still single level hearsay, as there was no live testimony to contradict it.

The testimony of Mr. Burden and Ms. Gallagher as to their observations after they arrived is not hearsay, and I have credited their accounts, which are consistent with Ms. B.’s account.

The Community of Hope has not contended that the officers or the direct witnesses to the event were unavailable. Since these witnesses were apparently available, the *Compton* case instructs me that it is difficult for me to credit the hearsay accounts over live testimony.

Ms. B. gave a live account of the event on January 11, 2011. I found no reason to disbelieve her account. If the Community of Hope had presented live witnesses to the event or had offered the videotape, then I could compare this evidence to Ms. B.’s account. In the absence of other direct evidence or photographic evidence, I have largely credited Ms. B.’s testimony.

This does not mean that it is improper to offer hearsay evidence. The party that offers hearsay, especially when direct witnesses are available to testify, takes the chance that the evidence will not be credited against direct testimony.

IV. Conclusions of Law

A. Case No. 2010-SHEL-00133

The Community of Hope seeks in this case to terminate shelter services to Ms. B. because she allegedly failed to accept an offer of permanent housing after two offers. The Community of Hope has failed to meet its burden of proof in this case.

D.C. Official Code § 4-754.36(2)(F) provides:

A provider may terminate its delivery of services to a client only when:

* * *

(2) The client:

(F) Fails to accept an offer of appropriate permanent housing or supportive housing that better serves the client's needs after having been offered 2 appropriate permanent or supportive housing opportunities[.]

Under § 4-754.36(3), if the provider relies on this ground for termination, the provider must show that it made “reasonable efforts to help the client overcome obstacles to obtaining permanent housing.”

The Community of Hope contends that it made more than two offers of “appropriate permanent housing.” This term is defined in § 4-751.01(4):

(4) “Appropriate permanent housing” means permanent housing that does not jeopardize the health, safety, or welfare of its occupants, meets the District’s building code requirements, and is affordable for the client.

The Community of Hope apparently believes it is sufficient to show that it offered many housing opportunities over a seven-month period, and that Ms. B. rejected them all. This is not sufficient.

The record does not show that the Community of Hope offered housing that met the District’s building codes or that was affordable to Ms. B. Even assuming that she qualified for HPRP or STEAP benefits, Ms. B. would be expected to pay full rent and utilities within a month or within three months. Ms. B.’s credited testimony establishes that all eight of the properties referred to her were too expensive for her income. There was no evidence that the properties met the D.C. building codes. In fact, at the juncture that the properties were offered, the Community of Hope was not in a position to have the properties inspected or to conduct the other inquiries necessary to determine the appropriateness of the housing.

For these reasons, I must reverse the October 27, 2010 notice of termination of shelter services for failure to accept offer of permanent housing after two or more offers.

B. Case No. 2011-SHEL-00037

The Community of Hope seeks in this case to terminate Ms. B. from its emergency shelter, and it has already implemented this action subject to the hearing process. D. C. Official Code § 4-754.38(a) states:

Whenever a client presents an imminent threat to the health or safety of the client or any other person on a provider’s premises, the provider, in

light of the severity of the act or acts leading to the imminent threat, may immediately transfer, suspend or terminate the client, without written notice of transfer, suspension, or termination as required by § 4-754.33(c).

The dispositive issue in this case is whether the acts of Ms. B. created an imminent threat to herself or others at the Community of Hope's shelter premises and were so severe as to warrant the termination of Ms. B. from the shelter program. In order to prevail based upon this statutory provision, CCNV must prove its allegations by reliable, probative, and substantial evidence. D.C. Official Code § 2-509 (b) and (e). The District of Columbia Court of Appeals has interpreted this standard to be equivalent to a "preponderance of the evidence." *See, e.g., Hutchinson v. District of Columbia Office of Employee Appeals*, 710 A.2d 227, 230-32.

An "imminent threat to the health and safety" is defined as, "an act or credible threat of violence on the grounds of a shelter or supportive housing facility." D.C. Official Code § 4-751.01(24). The Community of Hope has failed to make this showing.

The credited testimony from Ms. B. shows that there was a history of K.R. making threats against her, that Ms. B. filed a grievance with the Community of Hope seeking protection from K.R., that the Community of Hope convened one meeting but otherwise did nothing to separate the two women or address the situation, and that Ms. B. acted on January 11, 2011 to defend her daughter, her grandchild, and herself from harm by K.R.

I agree with the Community of Hope that it cannot tolerate acts of violence or threats of violence at its apartment facility. I listened carefully to the testimony of Ms. B., and her testimony convinced me that she did what she could to address the threats against her through

appropriate channels. While her actions may have contributed to the conflict, she clearly acted to help her family when it was threatened.

Under these circumstances, Ms. B.'s actions did not constitute "an act or credible threat of violence" at the Hope Apartments. I must reverse the January 11, 2011 notice of termination.

C. Summary

In Case No. 2010-SHEL-00120, I must order the Community of Hope to comply with the DHS administrative review decision, dated January 24, 2011. That decision reversed or denied the Community of Hope's notice to terminate HPRP services to Ms. B. I will order the Community of Hope to provide some rental assistance services to Ms. B., forthwith, in accordance with the Act.

In Case No. 2010-SHEL-00133, I must reverse the October 27, 2010 notice of termination of shelter services because Ms. B. allegedly did not accept offer of permanent housing. The Community of Hope failed to prove that the permanent housing offered met the D.C. building codes, or was affordable or otherwise appropriate for Ms. B.

In Case No. 2011-SHEL-00037, I must reverse the January 11, 2011 notice of emergency termination of shelter services because Ms. B. allegedly presented an imminent threat to herself or others at the shelter. The evidence shows that Ms. B. acted in defense of her family and herself after she was taunted and her daughter was attacked by K.R.

Consequently, I will order the Community of Hope to immediately reinstate Ms. B. to the Hope Apartments.

V. Order

Based on the foregoing findings of fact and conclusions of law, it is, this 15th ___ day of ___February___, 2011:

ORDERED, that, in Case No. 2010-SHEL-00120, the Community of Hope must comply with the DHS administrative review decision, dated January 24, 2011. Compliance means that the Community of Hope must provide some form of rental assistance program to Petitioner C.B., forthwith, subject to the terms of the Act; and it is further

ORDERED, that, in Case No. 2010-SHEL-00133, the Community of Hope's October 27, 2010 notice of termination of shelter services for alleged failure to accept offer of permanent housing, is **REVERSED**; and it is further

ORDERED, that, in Case No. 2011-SHEL-00037, the Community of Hope's January 11, 2011 notice of emergency termination of shelter services for allegedly presenting an imminent harm to self or others at the facility, is **REVERSED**; and it is further

ORDERED, that the Community of Hope shall immediately reinstate Ms. B. to her shelter housing at the Hope Apartments; and it is further

ORDERED, that any party may appeal this Order by following the instructions below.

February 15, 2011

_____/s/_____
Paul B. Handy
Administrative Law Judge

